

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

IN RE UPSTREAM ADDICKS AND
BARKER (TEXAS) FLOOD-CONTROL
RESERVOIRS

Sub-Master Docket No. 17-cv-9001L

THIS DOCUMENT RELATES TO:

Judge Charles F. Lettow

ALL UPSTREAM CASES

Electronically filed July 27, 2020

DEFENDANT’S UNOPPOSED MOTION TO EXTEND FACT DISCOVERY DEADLINE

Pursuant to Rules 6(b) and 6.1 of the Rules of the United States Court of Federal Claims (“RCFC”), Defendant United States moves for a 90-day extension of time, up to and including, October 26, 2020, to complete fact discovery. This request, which is unopposed by Plaintiffs, is based on considerable discussions by the parties regarding fact discovery that remains to be completed following the Court’s Order of June 29, 2020, ECF No. 311 (the “June 29 Order”). In addition, the requested extension of the fact discovery deadline is expressly based on a framework and conditions agreed to by the parties in order to facilitate the completion of fact discovery by the extended deadline. For these reasons, which are detailed below, good cause exists to extend the deadline to complete fact discovery to October 26, 2020.

Good Cause Exists to Extend the Fact Discovery Deadline

The Amended Scheduling Order issued by the Court on May 19, 2020, extended the deadline to complete fact discovery to July 27, 2020. *See* ECF No. 295.

Between May 13 and 22, 2020, the parties filed and briefed four separate discovery-related motions. *See* ECF Nos. 291, 292, 298 and 299. On June 10, 2020, the Court held a telephonic hearing on the parties’ four discovery motions. The Court thereafter issued the June 29

Order resolving those discovery motions.

Following a review of the June 29 Order, the parties conferred regarding a framework for completing remaining fact discovery within a reasonable period of time. To complete fact discovery by October 26, 2020, the parties have agreed to the following with respect to supplemental production by the United States:

- A. The United States will produce all responsive non-privileged studies or analyses in accordance with the June 29 Order. Where a complete version of a study or analysis is produced, or the latest draft of such a study or analysis is produced, the United States will also produce any underlying data, but will not collect, produce or log any prior drafts of the study or associated but extraneous documents, such as comments and review, meeting notes and minutes, or task lists.
- B. This supplemental production by the United States will be done on a rolling basis, with the first batch to be produced on or before August 15, 2020, the second batch to be produced on or before September 14, 2020, and production of all responsive, non-privileged studies to be completed within 30 days of the close of discovery, or on or before September 25, 2020.
- C. Any study, report or analysis that is determined to be responsive but subject to a privilege claim will be collected by the United States and identified on a privilege log. However, consistent with the approach described above in Paragraph A for studies that are produced, the United States will only identify and log either the complete study or the most recent draft of the study. The United States will not identify every draft leading up to the current version or associated but extraneous documents, such as comments and review, meeting notes and minutes, or task lists.

D. The United States will not collect or log e-mails related to the responsive studies or analyses described in Paragraph A.

E. The United States will produce its completed privilege log and any supporting declaration for any logged documents which are withheld under the deliberative process privilege by September 25, 2020.

In addition to completing any supplemental document production, the parties intend to complete any remaining written discovery and take remaining fact-related depositions by October 26, 2020.

Defendant has conferred with Plaintiffs' about this motion for a 90-day extension of the fact discovery deadline and, based on the parties' agreement set forth above, Plaintiffs do not oppose this motion.

CONCLUSION

For the foregoing reasons, and for good cause, the United States requests a 90-day extension of time, up to and including, October 26, 2020, to complete fact discovery in the just compensation phase as to the designated test property claims.

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Dated July 27, 2020

Respectfully submitted,

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s/ Kristine S. Tardiff

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